



**[6450-01-P]**

**DEPARTMENT OF ENERGY**

**10 CFR Part 625**

**RIN 1901-AB29**

**SPR Standard Sales Provisions**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE or Department) is amending its regulations to require publication of its Standard Sales Provisions for the price competitive sale of petroleum from the Strategic Petroleum Reserve (SPR) solely on the DOE SPR website. Any subsequent revisions to its Standard Sales Provisions will also be published solely on the DOE SPR website. DOE will publish notification in the *Federal Register* and send notification to registered users in the SPR sales system when DOE revises its Standard Sales Provisions on the DOE SPR website. Notices of Sale will reference the Standard Sales Provisions published on the DOE SPR website in specifying which contractual terms and conditions, as well as contractor financial and performance responsibility measures, are applicable to that particular sale. The final rule is intended to expedite the preparation of and simplify the content of Notices of Sale, which in turn will reduce the administrative burden placed on prospective bidders.

**DATES:** This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Thomas McGarry, U.S. Department of Energy, Office of Petroleum Reserves, Office of Fossil Energy, Forrestal Building, Room 3G-024, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-8197, *email*:

*thomas.mcgarra@hq.doe.gov*; or Bill Cody, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586-6918, *email*: *bill.cody@hq.doe.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

### **II. Discussion of Final Rule and Response to Comments**

- A. Summary of the Final Rule
- B. Response to Comments

### **III. Regulatory Review**

- A. Executive Orders 12866 and 13563
- B. Executive Orders 13771, 13777, and 13783
- C. National Environmental Policy Act
- D. Regulatory Flexibility Act
- E. Paperwork Reduction Act
- F. Unfunded Mandates Reform Act of 1995
- G. Treasury and General Government Appropriations Act, 1999
- H. Executive Order 13132
- I. Executive Order 12988
- J. Treasury and General Government Appropriations Act, 2001
- K. Executive Order 13211
- L. Congressional Notification

### **IV. Approval of the Office of the Secretary**

#### **I. Background**

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, to store petroleum to diminish the impact of disruptions on petroleum supplies and to carry out the obligations of the United States under the

International Energy Program. The principal method for distributing SPR petroleum is through price competitive sale, 42 U.S.C. 6241(e), and DOE utilizes certain contract terms and conditions – known as Standard Sales Provisions (SSPs) – that are expected to be contained in contracts for the sale of SPR petroleum.

Prior to this final rule, DOE’s regulations called for the publication of the Standard Sales Provisions in the *Federal Register* and the Code of Federal Regulations (CFR) as an appendix to 10 CFR part 625, and provided for the periodic review and republication of the Standard Sales Provisions in the *Federal Register*, including any revisions to such provisions. However, these self-imposed regulatory requirements have inhibited DOE’s ability to make timely updates to its Standard Sales Provisions; DOE was last able to update the Standard Sales Provisions in 2005.

As a result, the Standard Sales Provisions have become increasingly inconsistent with changes in crude oil markets, infrastructure, ownership, technology, financial processes, business practices, subsequent legislation and regulations, and other factors and circumstances. In a price competitive sale conducted in 2017, 12 years after the Standard Sales Provisions were last updated, there were 11 pages of changes involving 24 sections of the Standard Sales Provisions in the Notice of Sale. As a result, the time and costs spent by industry associated with cross-referencing changes to the Standard Sales Provisions made applicable to a particular sale has increased, and will likely continue to increase due to the large number of required sales over the next decade.<sup>1</sup>

In light of these circumstances, DOE has determined that publishing the Standard Sales Provisions solely on the DOE SPR website, and revising these Standard Sales Provisions as

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<sup>1</sup> Pub. L. 114-74, secs. 403, 404 (Nov. 2, 2015); Pub. L. 114-94, sec. 32204 (Dec. 4, 2015); Pub. L. 114-255, sec. 5010 (Dec. 13, 2016); Pub. L. 115-97, sec. 20003 (Jan. 6, 2017); Pub. L. 115-123, sec. 30204 (Feb. 9, 2018); Pub. L. 115-141, div. O, sec. 501 (March 23, 2018).

circumstances evolve, would increase the Department's ability to maintain up-to-date Standard Sales Provisions, which in turn will reduce the length and complexity of Notices of Sale published by DOE and reviewed by prospective offerors.

On July 26, 2018, DOE published the notice of proposed rulemaking (NOPR or proposed rule) to amend its regulations to require publication of its Standard Sales Provisions solely on the DOE SPR website instead of in the *Federal Register* and CFR (83 FR 35438). Publication of the NOPR began a 30-day public comment period that ended on August 27, 2018. DOE received one comment that was not related to the subject matter of the NOPR. The NOPR and comment received on the NOPR can be accessed at: <https://www.regulations.gov/document?D=DOE-HQ-2018-0028-0001>.

For additional background information on this final rule, please see the proposed rule. In the proposed rule, DOE provides information on DOE's practice of conducting price competitive sales of petroleum from the SPR through Notices of Sale, DOE's prior practice with respect to its Standard Sales Provisions, and additional discussion in support of this rulemaking.

## **II. Discussion of Final Rule and Response to Comments**

### **A. Summary of the Final Rule**

The final rule revises 10 CFR 625.4 in several respects. First, the Standard Sales Provisions applicable to price competitive sales of petroleum<sup>2</sup> from the SPR will no longer be required to be published in the *Federal Register* and in the CFR as an Appendix to 10 CFR part 625. Instead,

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<sup>2</sup> As used in this rulemaking, "petroleum" includes "crude oil, residual fuel oil or any refined petroleum product (including any natural gas liquid and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal)." 10 CFR 625.2.

the Standard Sales Provisions applicable to price competitive sales of petroleum from the SPR will be published solely on the DOE SPR website, which is currently at <https://www.energy.gov/fe/downloads/price-competitive-sale-strategic-petroleum-reserve-petroleum>. Second, under the final rule, revisions to the Standard Sales Provisions will be published solely on the DOE SPR website, instead of in the *Federal Register*. Third, DOE will publish notification in the *Federal Register* and send notification to registered users in the SPR sales system each time DOE revises and republishes its Standard Sales Provisions on the DOE SPR website. Fourth, Notices of Sale will reference the continually updated Standard Sales Provisions published on the DOE SPR website, instead of the *Federal Register* and the CFR, in specifying which contractual terms and conditions, as well as contractor financial and performance responsibility measures, are applicable to a particular sale.

In addition to these revisions to 10 CFR 625.4, the final rule also removes the Standard Sales Provisions from the CFR by deleting Appendix A to 10 CFR part 625.

The Department notes that the web address provided for the DOE SPR website in the regulatory text is the current web address. If the web address for the DOE SPR website changes at some future date, DOE will publish notification of changes to the SPR web address in the *Federal Register* and update the CFR reference to the web address.

## **B. Response to Comments**

The Department received one comment that was not related to the subject matter of the NOPR. Therefore, for the reasons discussed in the preamble and the proposed rule (83 FR 35438; July 26, 2018), the Department is publishing the rulemaking as proposed.

## **III. Regulatory Review**

### **A. Executive Orders 12866 and 13563**

This regulatory action has been determined to not be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011.) E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE concludes that this final rule is consistent with these principles. Specifically, this final rule would reduce burdens on potential offerors by reducing the time and cost associated with reviewing changes to the Standard Sales Provisions applicable to a particular sale. The final rule is intended to expedite the preparation of and simplify the content of Notices of Sale, which in

turn will reduce the administrative burden placed on prospective bidders.

### **B. Executive Orders 13771, 13777, and 13783**

On January 30, 2017, the President issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, Executive Order 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part

on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Finally, on March 28, 2017, the President signed Executive Order 13783, entitled “Promoting Energy Independence and Economic Growth.” Among other things, Executive Order 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that order.

Executive Order 13783 defined burden for purposes of the review of existing regulations to mean to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

DOE concludes that this final rule is consistent with the directives set forth in these executive orders. Specifically, this final rule provides that DOE would publish its Standard Sales Provisions solely on the DOE SPR website as opposed to in the *Federal Register* and in the CFR. This final rule also provides that DOE would provide notice to impacted parties of revisions to its Standard Sales Provisions. The final rule is intended to expedite the preparation of and simplify the content of Notices of Sale, which in turn will reduce the administrative burden placed on prospective bidders. DOE also anticipates that this final rule would encourage increased participation by the private sector in future sales of petroleum from the SPR, which in



turn would benefit the private sector by allowing for greater diversity and competition in sales of petroleum from the SPR.

### **C. National Environmental Policy Act**

Per 10 CFR 1021.410(a), DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Further, this rulemaking is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EIS nor an EA is required.

### **D. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in the preamble, this final rule provides that DOE would publish its Standard Sales Provisions solely on the DOE SPR

website, rather than in the *Federal Register* and in the CFR. This final rule also provides that DOE would provide notice to impacted parties of revisions to its Standard Sales Provisions. Because it would streamline the process for amending and modifying DOE's Standard Sales Provisions, which would in turn reduce the length and complexity of Notices of Sale published by DOE for sales of petroleum from the SPR, the final rule would not result in a significant economic impact on a substantial number of small entities. DOE anticipates that this final rule would encourage increased participation by the private sector in future sales of petroleum from the SPR, by reducing the opportunity cost to participate in such sales. This, in turn, would allow for greater diversity and competition in sales of SPR petroleum from the SPR, including increased participation by small entities.

Therefore, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a FRFA for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

#### **E. Paperwork Reduction Act**

The final rule does not create or change any requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* Accordingly, OMB clearance is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid

OMB Control Number.

#### **F. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on tribal, state, and local governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon tribal, state, or local governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on tribal, state, and local governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to tribal, state, or local governments, or to the private sector, of \$100 million or more in any one year (adjusted annually for inflation). *See* 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of tribal, state, and local governments. *See* 2 U.S.C. 1534.

This final rule provides that DOE would publish its Standard Sales Provisions solely on the DOE SPR website, rather than in the *Federal Register* and in the CFR. DOE has determined that the final rule would not result in the expenditure by tribal, state, and local governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

### **G. Treasury and General Government Appropriations Act, 1999**

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any final rule that may affect family well-being. The final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

### **H. Executive Order 13132**

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it would not preempt state law and would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### **I. Executive Order 12988**

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required

by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

#### **J. Treasury and General Government Appropriations Act, 2001**

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### **K. Executive Order 13211**

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant

energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has determined that this regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and therefore is not a significant energy action. The final rule would provide for the publication of DOE’s Standard Sales Provisions on the SPR website. DOE concluded, as discussed in the proposed rule, that this rulemaking would encourage increased participation by the private sector in future sales of petroleum from the SPR, by reducing the opportunity cost to participate in such sales. This increased participation would allow for greater diversity and competition in sales of SPR petroleum from the SPR, including increased participation by small entities as well as larger industry participants. This increased participation, however, is not expected to have a significant adverse effect on the supply, distribution, or use of energy because increased participation in the bidding process does not change the quantity of SPR petroleum offered or delivered. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### **L. Congressional Notification**

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule prior to its effective date. The report will state that it has been determined that the final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **IV. Approval of the Office of the Secretary**

The Secretary of Energy has approved the publication of this final rule.

#### **List of Subjects in 10 CFR Part 625**

Government contracts, Oil and gas reserves, Strategic and critical materials.

Signed in Washington, DC, on March 4, 2019.

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Steven E. Winberg  
Assistant Secretary  
Office of Fossil Energy

For the reasons stated in the preamble, DOE amends part 625, chapter II of title 10, Code of Federal Regulations as set forth below:

**PART 625—PRICE COMPETITIVE SALE OF STRATEGIC PETROLEUM RESERVE  
PETROLEUM**

1. The authority citation for part 625 continues to read as follows:

**Authority:** 15 U.S.C 761; 42 U.S.C. 7101; 42 U.S.C. 6241.

2. Section 625.4 is revised to read as follows:

**§625.4 Publication of the Standard Sales Provisions.**

(a) *Publication.* The Standard Sales Provisions shall be published on the U.S. Department of Energy Strategic Petroleum Reserve website (<https://www.energy.gov/fe/services/petroleum-reserves/strategic-petroleum-reserve>).

(b) *Revisions of the Standard Sales Provisions.* The Standard Sales Provisions shall be reviewed on a continuous basis and republished on the Department of Energy Strategic Petroleum Reserve website. Notification of revisions of the Standard Sales Provisions shall be made in the *Federal Register* and sent to existing registered users in the SPR sales system.

(c) *Notification of applicable clauses.* The Notice of Sale will specify, by referencing the Department of Energy Strategic Petroleum Reserve website, which contractual terms and conditions and contractor financial and performance responsibility measures contained or described therein are applicable to that particular sale.

**Appendix A to Part 625 [Removed]**

3. Appendix A to part 625 is removed.

[FR Doc. 2019-04463 Filed: 3/11/2019 8:45 am; Publication Date: 3/12/2019]